

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR : CA3-00431

Private Proceeding
Huis clos

Claimant(s)		Demandeur(s) d'asile
Date(s) of Hearing	December 16, 2003	Date(s) d'audience
Place of Hearing	Calgary, Alberta	Lieu de l'audience
Date of Decision	January 22, 2004	Date de la décision
Panel	Benjamin Ayorech	Tribunal
Claimant's Counsel	Roxanne Haniff Darwent	Conseil du demandeur d'asile
Refugee Protection Officer	NII	Agent de la protection des réfugiés
Designated Representative	NII	Représentant désigné
Minister's Counsel	NII	Conseil du ministre

You can obtain the translation of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB at the following address: 344 Slater Street, 14th Floor, Ottawa, Ontario K1A 0K1, by e-mail to translation@irb.gc.ca or by facsimile at (613) 947-3213.

La Direction des services de révision et de traduction de la CISR peut vous procurer les présents motifs de décision dans l'autre langue officielle. Vous n'avez qu'à en faire la demande par écrit à l'adresse suivante : 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courriel à traduction@cisr.gc.ca ou par télécopie au (613) 947-3213.

s.19(1)

1 the claimant, is a citizen of Kenya and claims refugee protection pursuant to ss.96 and 97 the Immigration and Refugee Protection Act.

ALLEGATIONS

The claimant alleged that he came to Canada to seek protection because the police and Kenyan society in general persecuted him because of his sexual orientation being a bisexual male.

He alleged that his wife found him having sex with another male in his car on 1 2001. She made an alarm that attracted a crowd who beat him and took him to a police station where he was detained and further beaten. A friend paid the police a bribe to secure his release.

He alleged that the family of his male sexual partner threatened to harm or kill him. Strange people, whom he suspected to be paid by his male sexual partner to harm him, and other people he suspected to be connected with the police constantly went by his home and workplace looking for him so he came to Canada to seek protection.

DETERMINATION

I find that the claimant is not a Convention refugee as he has a viable internal flight alternative in Mombassa. I also find that the claimant is not a person in need of protection as his removal to Kenya would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment and no substantial grounds exist to find that his removal to Kenya will subject him personally to a danger of torture.

ANALYSIS

The claimant testified that he first joined a group of friends in what he saw as a fun activity by engaging in sexual acts with other men while on a business trip to Mombassa in 1995. He engaged in such activity clandestinely and without any problems until his wife accidentally found him on 2001. He practiced it mainly away from Nairobi where he lived with his wife and children. People generally knew him as a married family man.

While homosexuality remains illegal in Kenya and politicians and religious leaders sometimes openly condemn it, homosexuals, lesbians and bisexuals are generally merely ridiculed. Documentary evidence indicates that homosexuality is becoming more common and

s.19(1)

that, especially in Mombassa, many generally view it as a lifestyle¹. This document indicates, among other things, that "The IPS report alleges that the practice is more common in the coastal region of Mombassa where *marriages* between men is *perhaps* more acceptable. The document further indicates that children usually shout *shoga* (*male prostitute*) to known homosexuals as they walk in the streets. I find this treatment to be harassment and not persecution. I find that the claimant can return to Kenya and safely live in Mombassa. In the claimant's particular circumstances I find it reasonable for him to do so in that he is a businessman who normally traveled widely within and outside Kenya. He testified that he usually engaged in sexual activity with his male friends while on business trips in other cities in Kenya and South Africa.

The claimant did not provide credible and trustworthy evidence to link the people that he alleged frequented both his Nairobi home and workplace neighbourhoods to the police. I find his allegation that these people are connected with the police to be speculative and not supported by fact.

The claimant alleged at the hearing that he also feared Kenya African National Union (KANU) youth wingers as he supported opposition parties by donating money to them. When his attention was drawn to the fact that KANU lost the last election in Kenya to the coalition of opposition parties known as FORD and it was suggested to him that his friends in the coalition, now in government, would offer him protection from any KANU youth who might try to harass or harm him, he agreed.

Based on the foregoing analysis I find that there is no serious possibility that the claimant would be persecuted for a Convention ground if he were to return to Kenya today. I also find that the removal of the claimant to Kenya would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment and no substantial grounds exist to find that his removal to Kenya will subject him personally to a danger of torture.

For those reasons I find that the claimant, _____ is neither a Convention refugee nor a person in need of protection and I, therefore, reject his claim.

"Benjamin Ayorech"
Benjamin Ayorech

DATED: 22 January 2004

¹ Exhibit R-1, Item 11